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**Human Rights Committee**
**110th session**

**Summary record of the 3050th meeting**
Held at the Palais Wilson, Geneva, on Tuesday, 18 March 2014, at 3 p.m.

*Chairperson*: Sir Nigel Rodley

## Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

*Second periodic report of Nepal*

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant** (*continued*)

*Second periodic report of Nepal* (CCPR/C/NPL/2; CCPR/C/NPL/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Nepal took places at the Committee table.*

2. **Mr. Malla** (Nepal), introducing his country's second periodic report (CCPR/C/NPL/2), said that his Government attached great importance to its human rights commitments and did its utmost to meet its reporting obligations under the Covenant and other international instruments to which Nepal was party. The report that his Government had submitted for consideration by the Committee had been prepared following a wide-ranging consultation process with various stakeholders, including civil society organizations. The Government viewed the dialogue with the Committee as an opportunity both to assess the current human rights situation and to identify ways of strengthening national capacity in order to ensure the continued right of the people of Nepal to exercise their fundamental freedoms.

3. Nepal was undergoing a process of socioeconomic and political transformation following a decade-long conflict and the popular movement of April 2006. The elections to a new Constituent Assembly held in 2013 had been marked by a record turnout, reflecting the aspirations of the people of Nepal for democracy, stability, peace and prosperity. The Government was giving its full support to the Assembly to help it complete the drafting of the new democratic constitution within one year. The Government was also focused on advancing the economic transformation of the country, since extreme poverty and its associated problems were the biggest threats to the realization of human rights.

4. The protection and promotion of human rights formed the cornerstone of Nepal's system of governance. The Interim Constitution was a comprehensive charter of all the major fundamental rights, enshrining a wide range of civil, political, economic, social, cultural and collective rights, as well as effective measures for their protection. The creation of an independent and impartial justice system under the Constitution had been a key factor in enhancing the protection of fundamental rights, with courts drawing extensively on the provisions of international human rights instruments.

5. The National Human Rights Commission (NHRC), an independent constitutional body, ensured the effective implementation of human rights. Under its comprehensive mandate, the Commission was empowered to conduct investigations into human rights violations on the basis of complaints filed by victims or information received from any other source and to make recommendations for action against the perpetrators of such violations. It discharged its mandate in full conformity with the Paris Principles, with the Government providing the support and funding necessary for its proper functioning. A number of other institutions also existed to address the specific human rights issues of historically marginalized groups and communities.

6. Despite a number of constraints, notably Nepal's situation as a least developed and landlocked country, the Government was implementing various human rights policies and programmes. The areas concerned by those initiatives were, among others, gender equality, social inclusion, children's rights and the rights of persons with disabilities. The strategies employed included a holistic approach to human rights, gender mainstreaming, and collaboration with civil society and development partners.

7. The Government was committed to reforming domestic legislation to bring it further into line with international human rights standards. In that regard, the proposed criminal

code included detailed provisions on the criminalization of enforced disappearance and torture. The Government was also planning to submit to parliament a number of bills relating to the criminalization of grave breaches of the Geneva Conventions of 1949, the protection of witnesses and the rights of persons with disabilities.

8. The Government was currently preparing bills to establish transitional justice mechanisms in line with its international obligations and a recent verdict of the Supreme Court. The establishment of those mechanisms would enable conflict victims to obtain further redress and ensure that the perpetrators of the crimes committed against them would be brought to justice.

9. Transition was a difficult process, calling for an approach that took account of Nepal's specific situation and accepted international standards. His Government hoped that the international community properly appreciated reality on the ground in Nepal and would continue to support it in its progress towards sustained peace, stability, prosperity and development.

10. **Mr. Dhital** (Nepal), summarizing his Government's replies to the list of issues (CCPR/C/NPL/Q/2/Add.1), said that no law imposed any restriction on the constitutional mandate or jurisdiction of the NHRC, which enjoyed structural, functional and financial independence in line with the Paris Principles. The provision concerning a six-month limit for lodging a complaint with the NHRC in cases of human rights violations had been declared null and void by the Supreme Court, whose judgements were binding. His Government was committed to submitting a bill amending the National Human Rights Commission Act to give effect to the Supreme Court's judgement. There was no need to amend the Act with a view to extending the Commission's competence to cover investigations of human rights violations committed by army personnel, since it was already empowered to carry out such investigations.

11. Gender inequality and injustice were seen as key threats to inclusive democracy, sustainable development and the rule of law. Consequently, a range of constitutional, policy and operational measures had been adopted with a view to protecting the human rights of women. Positive discrimination was an important strategic measure that had been employed to maintain gender equality in Nepal.

12. His Government was committed to ending all stigmatization of, and discrimination against, any person on the basis of sexual orientation and gender identity. Since 2007, it had officially recognized a third-gender category on various documents. Under the amended Citizenship Rule, any Nepalese citizen who came under the third-gender category could obtain a citizenship certificate by indicating the term "other" instead of "male" or "female". A series of measures to combat caste-based discrimination had also been taken, including the establishment of the National Dalit Commission, which was responsible for the protection and promotion of the human rights of Dalits. A bill to upgrade the status of the Commission from an executive body to a statutory body was currently under consideration.

13. All forms of violence against women had been criminalized, and the law enforcement agencies and courts were responding effectively to cases of such violence. Victims' access to justice was being gradually strengthened, and the police had been instructed to record complaints and conduct investigations in accordance with the provisions of the applicable laws. The rising number of complaints lodged by victims of gender violence bore witness to increased confidence in the justice system.

14. The Constitution explicitly recognized the right to life as a fundamental right of each person. Any unlawful use of force or violation of the right to life by the State or a non-State actor was punishable under domestic legislation. As to extrajudicial killings, the Government had issued instructions to all relevant agencies ordering them to protect human lives and to punish all those involved in the commission of such acts.

15. Most of the offences that constituted torture had been criminalized; any kind of unlawful use of force, beating, serious injury or sexual offence against a detainee by any person, including a public office-holder, was punishable under domestic legislation. Furthermore, the Government was committed to enacting a law criminalizing the offence of enforced disappearance in accordance with international standards and ensuring that allegations of enforced disappearance, torture and cruel, inhuman or degrading treatment or punishment were investigated effectively and impartially.

16. Article 29 of the Interim Constitution guaranteed the right to freedom from exploitation and explicitly prohibited human trafficking, slavery or bonded labour, even in the name of custom, tradition and practice. The Office of the National Rapporteur on Trafficking in Women and Children had been established within the NHRC and had conducted several advocacy and training programmes on both trafficking and safe migration.

17. Arbitrary or unlawful detention and the holding of detainees in unofficial places of detention were prohibited under domestic laws. The Government had issued strict instructions to the security forces not to arrest any person in an arbitrary and unlawful manner. Regular training, orientation and sensitization programmes on the use of force were provided for security personnel. A number of institutions, including the NHRC and the Office of the Attorney General, were mandated to investigate any cases of arbitrary or unlawful detention that might occur.

18. The NHRC could visit places of detention and monitor custody records kept by the police, as well as services and facilities available to prisoners. It was mandated to recommend prison reforms to the Government and to take action in the event of human rights violations committed by prison officials. Likewise, the Attorney General was empowered, on the basis of complaints or information received by him or her, to investigate allegations of inhuman treatment of any person in custody and to give necessary directions to the relevant authorities in order to prevent the recurrence of such incidents.

19. Journalists and human rights defenders were able to exercise their rights freely; allegations of physical assault, death threats and reprisals by security forces were false. The Government was committed to taking legal action against the perpetrators of any such acts. Victims could lodge complaints of human rights violations with the competent body concerned, which would deal with them in accordance with the relevant laws. Regarding the activities of Tibetan refugees, they were free to enjoy rights and freedoms in accordance with the law, but when any act or activity carried out by them contravened the existing law, and thus undermined Nepal's friendly relationship with its neighbour, it was the legal duty of the Government to take action as provided for by law; such action could not be characterized as a human rights violation.

20. **Ms. Waterval** welcomed the fact that Nepal had become a party to both Optional Protocols to the Covenant but regretted the lack of statistical data in its periodic report. Regarding the autonomy of the National Human Rights Commission, she asked the delegation to clarify the statements in the written replies to the list of issues (CCPR/C/NPL/Q/2) about funding through the Consolidated Fund and about the Commission's organizational structure requiring the Government's consent. She asked the delegation to comment on reports that very few of the Commission's recommendations had been implemented and that the terms of all the Commission's members had expired in September 2013. She asked whether the Government had submitted a bill to parliament to repeal or amend the legal provisions — recently declared null and void by the Supreme Court — that restricted the lodging of complaints before the Commission and the implementation of its recommendations. She wished to know of any specific cases in which the Commission had investigated human rights violations allegedly committed by army personnel.

21. She asked the delegation to comment on reports that members of sexual minorities had difficulties obtaining citizenship certificates. She noted that there were no women among the members of the delegation and urged the State party to draw up an action plan to raise awareness of the Domestic Violence (Crime and Punishment) Act of 2009. The definition of rape included in the Act was too narrow, and the requirement to report cases of rape within 35 days of the commission of the offence posed an obstacle to victims seeking justice. She therefore asked when the Government planned to submit a bill to parliament amending the Act. She also urged the State party to repeal the requirement to report cases of sexual abuse of children within three months of the date when the offence was committed.

22. She noted that Amnesty International had obtained official statistics from the Government on the number of reported rape cases, and wondered why that data had not been included in the report to the Committee. She asked why marital rape carried a lesser punishment than other forms of rape. She wished to know the total number of service centres for victims of domestic violence and whether those centres also functioned as shelters. She requested further information about the Gender Violence Elimination Fund. She asked what programmes or policies were in place to encourage perpetrators of domestic violence to change their behaviour.

23. She asked the delegation to comment on the fact that the National Children Policy of 2012, which aimed to end all forms of corporal punishment in schools, other institutions and the family, had not been converted into law, and on the fact that corporal punishment was lawful when used as a disciplinary measure in prisons and alternative care settings.

24. **Mr. Iwasawa** asked whether all provisions of the Covenant had the force of law in the domestic legal order, and whether the courts could directly apply those provisions. He asked the delegation to comment on reports that the right to an effective remedy was not guaranteed in Nepal and that Supreme Court judgements finding various human rights violations had not been implemented. He wished to know how the Supreme Court had used the Covenant in its judgements in the nine cases referred to in paragraph 5 of the written replies. While he welcomed the State party's ratification of the Optional Protocol to the Covenant, he regretted that the Government had not yet implemented the Committee's Views on various cases involving Nepal, and wondered how the Supreme Court's ruling of unconstitutionality against the ordinance on a transitional justice mechanism would affect the implementation of those Views. He asked whether any effective investigations had been conducted into the many cases of alleged torture and ill-treatment.

25. He hoped that the State party would soon enact a law criminalizing enforced disappearance. In the light of the unconstitutionality of the transitional justice mechanism, he wished to know how the Government intended to address the many unresolved cases of enforced disappearance that had occurred during the 11-year period of conflict. He asked if it was true that, despite the Supreme Court ruling, the content of the bill recently submitted to parliament by the Government was the same as that of the unconstitutional ordinance. He asked the delegation to comment on reports that extrajudicial killings had been widespread during the conflict and had continued afterwards, and that the police refused to register complaints of such killings or investigate them.

26. He hoped that the comprehensive bill criminalizing torture would soon be adopted by parliament. He wished to know the reasons why the Government had dismissed as biased the reports alleging that torture was systematically practised and asked what measures were being taken to make torture prevention efforts more effective.

27. **Mr. Kälin** said that a large body of evidence pointed to impunity and a lack of accountability for the serious human rights violations committed during the conflict. He asked what sentences had been imposed on military personnel and police officers involved

in such violations. He wished to know if the Government was prepared to withdraw its bill on a transitional justice mechanism and replace it with one that was in line with the Interim Constitution and the Covenant. He sought assurances that the bill would not provide amnesty for crimes against humanity or war crimes. He wished to know the legal basis for the Government's assertion that no State officials involved in serious human rights violations enjoyed immunity.

28. He requested further information on cases in which criminal charges had been withdrawn pursuant to the State Cases Act and asked if the Government was prepared to amend the Act so that charges could not be withdrawn in cases involving human rights violations. He wondered why it had taken so long for the Government to envisage establishing vetting guidelines to prevent persons implicated in human rights violations from holding public office, and wished to know when such guidelines would be adopted and what their content would be.

29. Regarding the reply to question 4 of the list of issues, it was not appropriate to list crimes such as murder or hostage-taking as serious violations of human rights and place them in the same category as war crimes, crimes against humanity and genocide; the latter were in a different category and differed greatly from the former with respect to statutes of limitations and the possibility of amnesty. He hoped that torture and enforced disappearance would soon be criminalized in Nepalese law but noted that in 2005 the Committee against Torture had made similar recommendations, which had yet to be implemented. Measures such as scholarship programmes and the establishment of steering committees were positive but not sufficient to deal with the lack of redress for the many victims of serious human rights violations.

30. **Mr. Neuman** requested more specific information about the measures in place to discourage child marriage and other harmful traditional practices. He also requested statistical data on the impact of positive discrimination measures benefiting women in Nepal. He asked if it was correct to say that the State faced difficulties in placing women in positions where they would individually exercise a high degree of decision-making authority.

31. He requested specific information on sanctions imposed in cases of torture and on any reparation provided to victims of torture. He asked if it was true that the form of compensation known as interim relief was available to victims of other violations but not to victims of torture. He wished to know whether the State party planned to set up an independent complaint mechanism on the conduct of security forces and to amend the State Cases Act of 1992 by including torture of a child as a scheduled offence.

32. **Mr. Fathalla** asked how effective the mass media were was in spreading information about the human rights of Dalits and wished to know the extent of the economic support provided to them. He asked the delegation to provide examples of Dalits' involvement in decision-making, as well as statistical data on positive discrimination measures benefiting them. He enquired about the results of the efforts to disseminate information about the Caste-based Discrimination and Untouchability (Offence and Punishment) Act and asked whether a time frame had been established for providing training to all law enforcement officials on caste-based discrimination.

33. He requested more specific information about the budget and resources allocated to the National Dalit Commission and wished to know when the proposed bill to upgrade the status of the Commission would be adopted. He asked the delegation to provide statistical data on positive discrimination measures for ethnic and religious minorities and indigenous peoples. He wished to know more about the exceptions to equal enjoyment of the fundamental rights guaranteed by the Interim Constitution. Lastly, he requested further

details on efforts to address the difficulties in obtaining citizenship certificates for certain historically marginalized groups, particularly in the Terai.

34. **Mr. Zlatescu** said that the failure of the Nepalese authorities to abide by an informal gentlemen's agreement between Nepal, the Tibetan government-in-exile, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the embassy of the United States in Nepal had led to a sharp rise in the incidence of refoulement of Tibetan refugees at the State party's border with China. Since 2006, Nepal had toughened regulations for legally resident Tibetans, who were no longer permitted to travel to restricted areas, mostly along the border with China. Anyone infringing those regulations risked arrest and even deportation.

35. Tibetans who had arrived before 1989 had the tacit right to remain in the country but their political and economic rights were limited. Those who had arrived thereafter were considered to be illegal aliens and could be deported at any time. Because of the difficulties Tibetans faced in obtaining travel documents, they could not move to third countries. He asked whether the State party would resuscitate and abide by the gentlemen's agreement, accept a proposal by UNHCR whereby incoming Tibetans would be treated as asylum seekers and not as fugitives, halt the refoulement of Tibetan asylum seekers and cease deporting Tibetan migrants found without valid travel documents within several days' walking distance of the Chinese border. If so, would the State party also investigate cases of refoulement and apply disciplinary measures to those responsible, and issue Tibetans who had arrived in the State party prior to 1989 and their children with refugee identification certificates?

36. The Committee had information demonstrating that the persecution, public chastisement, torture and assassination of so-called witches by their families and village communities continued to occur in the State party. The killing of women and children accused of witchcraft should be treated as murder. Police tended not to interfere and the perpetrators, if brought to justice at all, tended to receive light prison sentences. The domestic law of the State party contained no specific provision for their punishment. Nepal had ratified the Convention on the Elimination of All Forms of Discrimination against Women and 24 other international human rights instruments containing provisions on violence against women. The State party was expected to incorporate them into its domestic legislation. The fact that the Supreme Court had invoked the Covenant in order to repeal certain legislation was welcome, but did the State party intend to introduce legislation to prosecute and punish the perpetrators of hate crimes against women, compensate the victims of such crimes and raise public awareness of the problem?

37. **Mr. Salvioli** asked whether the State party would criminalize enforced disappearance and thereby obviate the need for family members of disappeared persons to declare them dead in order to handle family matters, such as inheritance, when dealing with the authorities. He also asked whether the State party had a DNA database of citizens and whether it would implement a national programme of exhumation in order to help families identify missing people.

*The meeting was suspended at 5.05 p.m. and resumed at 5.20 p.m.*

38. **Mr. Dhakal** (Nepal) said that a bill on reform of the transitional justice mechanism had been submitted to parliament, which would have the final word on its approval. The Supreme Court had earlier ruled that the ordinance promulgating the mechanism in 2013 should be suspended and brought into line with international law. When legislation was passed, it would be possible to bring to justice persons who had committed grave human rights offences during the conflict.

39. The National Human Rights Commission was administratively and financially independent. It was financed by the Consolidated Fund, which did not require

parliamentary approval for expenditure. The Commission could establish regional and branch offices in consultation with the Ministry of Finance. The Supreme Court had ruled two subsections of the act under which the Commission had been established unconstitutional. The Commission itself had recommended, in line with Supreme Court rulings, that the Government should be mandated to approve the structure of public bodies. The terms of office of the chairperson and members of the Commission had expired and the Government was working to have their successors appointed.

40. Of more than 700 recommendations made by the Commission to the Government since 2001, 14 per cent had been fully implemented and 38 per cent partly implemented. A further 38 per cent were being carried out. The Government was committed to fulfilling all the Commission's recommendations. Some of those recommendations specifically referred to crimes committed during the conflict and would be implemented when the transitional justice mechanism became operative.

41. The Constitution prohibited all forms of torture and domestic laws included provision for ensuring that the victims of such acts received justice, including compensation. Bills containing amendments to the Criminal Code to specifically criminalize physical and mental torture would be examined by parliament.

42. The National Human Rights Commission had a mandate to initiate inquiries on the basis of reports concerning human rights violations and to make unannounced visits to places of detention. Anyone brought to court for remand in custody was entitled to request a medical examination and have the ensuing report submitted to the courts. Human rights units, which were authorized to investigate alleged human rights violations by law enforcement officials, had been established in the Ministry of Women, Children and Social Welfare and within the country's law enforcement agencies. Perpetrators were criminally liable for such offences. Members of the security forces received human rights training. Statements obtained under torture, threat of torture or otherwise without the consent of the detainee were inadmissible as evidence. While cases of torture were still reported on occasion, its use in the State party could not be described as systematic. The State party did not deport anyone to another State where there were grounds for believing that he or she would thereby face a risk of torture.

43. The Government had adopted various policy and institutional measures, administered by the Ministry of Peace and Reconstruction, on reparation and interim relief for victims of the conflict since the signing of the Comprehensive Peace Accord in 2006. A broad definition of conflict victims included those who had been subjected to sexual violence or murdered or who had disappeared during the conflict, as well as their families, who were equally entitled to reparation, interim relief and other forms of support.

44. All forms of violence against women were criminalized under domestic law. The Government was implementing programmes to combat violence against women and harmful traditional practices, and a bill to criminalize the latter had been drafted. The Prime Minister had set up a task force to curb domestic violence and promote gender mainstreaming in the process of legal reform. A series of bills had been drafted on the basis of the task force's work.

*The meeting rose at 6 p.m.*